

Presidential Determination  
No. \_\_\_\_\_

MEMORANDUM FOR THE HONORABLE GEORGE P. SHULTZ  
The Secretary of State

SUBJECT: Presidential Certification and Delegation of  
Authority with Respect to Section 163 of  
P.L. 97-377

Pursuant to the authority vested in me by Section 163 of the second Joint Resolution appropriating funds for fiscal year 1983 (P.L. 97-377), I hereby certify that I have reliable assurances that the countries for which Congress has been informed for this fiscal year of proposed foreign military sales financing or of expected foreign military sales agreements will not transfer sensitive United States equipment, materials, or technology in violation of agreements entered into under the Arms Export Control Act to any communist country, or to any country that receives arms from a communist country.

Pursuant to the authority vested in me by Section 621 of the Foreign Assistance Act of 1961, as amended, Section 301 of Title 3 of the United States Code, and as President of the United States, I hereby delegate to you the functions conferred upon me by Section 163 of P.L. 97-377.

This certification and delegation of authority shall be reported to Congress and shall be published in the Federal Register.

## JUSTIFICATION

Section 163 of the second Joint Resolution appropriating funds for Fiscal Year 1983 (P.L. 97-377) prohibits the use of funds made available by that Joint Resolution to furnish, or facilitate the sale or transfer of, sensitive United States defense equipment, materials or technology to any country, unless the President certifies that he has reliable assurances that such country will not transfer sensitive United States equipment, materials or technology in violation of agreements entered into under the Arms Export Control Act to any communist country, or to any country which receives arms from a communist country.

This provision is in addition to existing requirements in the Arms Export Control Act which govern transfers of defense articles and defense services. Section 3(a) of the AECA requires, as a condition of eligibility to receive defense articles and defense services from the United States Government under the Arms Export Control Act, that all foreign countries, prior to their receiving such articles and services, agree inter alia not to transfer these articles and services to anyone not an officer, employee, or agent of the purchaser without first obtaining the consent of the United States. The United States views these agreements as solemn undertakings.

Furthermore, Section 3(e) of the AECA requires the President to report to the Congress upon receiving information that an unauthorized third-party transfer of defense articles or services has taken place. Section 3(c) of the Act requires that the President report to the Congress upon receiving information that an unauthorized transfer of an article or service furnished under the AECA in "substantial violation" (in terms of quantity or gravity of the consequences) of a governing agreement "may have occurred." Section 3 further provides that the offending country may be rendered ineligible for further FMS financing by Presidential determination or by the adoption of a joint resolution to that effect by the Congress.

In accordance with these requirements, the United States remains alert for evidence of possible unauthorized transfers and diligently follows up on information it receives that would suggest that an unauthorized transfer of such defense articles or defense services may have occurred. A thorough analysis would be undertaken in order to determine whether an unauthorized transfer in fact occurred, and, if so, what response would be appropriate.

In addition, as a matter of long-standing practice and procedures, under the U.S. Conventional Arms Transfer Policy and the National Policy for the Disclosure of Classified United States Military Information to Foreign Governments and International Organizations, specific policy criteria and considerations must be satisfied on a country-by-country and case-by-case basis before a decision is made to approve any release of sensitive United States defense equipment, materials, or technology.

In complying with section 163 of P.L. 97-377, the situation with respect to Pakistan was previously examined. For this certification, we have reviewed and will continue to review all the countries noted in the fiscal year 1983 congressional presentation document for which an FMS financing program was proposed for fiscal year 1983 or by which foreign military sales agreements were expected to be accepted during fiscal year 1983. This involves a careful examination for each of these countries of the circumstances with respect to its handling of sensitive equipment, materials or technology. In each case, this review includes an assessment of the risks involved and the country's record in protecting U.S. sensitive equipment, materials or technology before transferring a sensitive defense article or defense service.

For this certification, and based on these procedures and the current examinations, it is concluded that the United States possesses reliable assurances that the countries noted in the fiscal year 1983 congressional presentation document for which an FMS financing program is proposed for fiscal year 1983 or by which foreign military sales agreements are expected to be accepted during fiscal year 1983 will not transfer sensitive U.S. equipment, materials or technology in violation of agreements entered into under the Arms Export Control Act to any communist country, or to any country which receives arms from a communist country.

COUNTRIES SUBJECT TO THIS CERTIFICATION

EAST ASIA & PACIFIC

Australia, Burma, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Singapore, Taiwan, Thailand.

NEAR EAST & S. ASIA

Bahrain, Bangladesh, Egypt, India, Israel, Jordan, Kuwait, Lebanon, Morocco, Oman, Pakistan\*/ , Qatar, Saudi Arabia, Tunisia, United Arab Emirates, Yemen Arab Republic.

EUROPE & CANADA

Austria, Belgium, Canada, Denmark, France, Federal Republic of Germany, Greece, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, Yugoslavia.

AFRICA

Botswana, Cameroon, Djibouti, Gabon, Ghana, Kenya, Liberia, Niger, Nigeria, Rwanda, Senegal, Somalia, Sudan, Zaire, Zimbabwe.

AMERICAN REPUBLICS

Antigua and Barbuda, Barbados, Brazil, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, St. Lucia, St. Vincent & the Grenadines, Uruguay, Venezuela.

\*/ Certification previously made on January 3, 1983.